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IN THE

Supreme Court of the United States

October Term, 1969
No. 608

ARNOLD CORNMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Claims.

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Petition for a Writ of Certiorari to the United States Court of Claims.

Petitioner, Arnold Cornman, prays that a writ of certiorari issue to review the judgment of the United States Court of Claims on petitioner's motion and respondent's cross-motion for summary judgment entered on April 11, 1969.

I.

Opinion Below.

The opinion of the United States Court of Claims is reported at 409 F. 2d 230 and is appended hereto as Appendix "A".

II.

Jurisdiction.

The date of the judgment of the United States Court of Claims sought to be reviewed, and its time of entry, is April 11, 1969.

A timely filed motion for rehearing, filed May 9, 1969, was denied on June 20, 1969.

The statutory provision believed to confer on this Court's jurisdiction to review the judgment in question by writ of certiorari is Title 28, United States Code, Section 1255 (a).

III.

Question Presented.

Whether the words "in any case" of Title 19, United States Code, Section 1619, refer to the service provided by an informer without regard to the period or number of violators or whether said words refer to the individual recoveries from separate and distinct violators of the customs laws.

IV.

Constitutional and Statutory Provisions Involved.

UNITED STATES CONSTITUTION, Amendment V, provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property, be taken for public use, without just compensation."

Title 19, United States Code, Section 1619 (Tariff Act of 1930 [46 Stat. 758, as amended, 49 Stat. 527 and 62 Stat. 869.]) provides:

"1619. Award of compensation to informers.

Any person not an officer of the United States who detects and seizes any vessel, vehicle, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer of the customs, or who furnishes to a United States attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue or a violation of the customs laws or the navigation laws, perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed $50,000 in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed $50,000

in any case. June 17, 1930, c. 497, Title IV, S. 619, 46 Stat. 758; Aug. 5, 1935, c. 438, Title III, S. 305, 49 Stat. 527; June 25, 1948, c. 646, S. 1, 62 Stat. 869."

V.

Statement of the Case.

The following factual statement is that adopted by the Court of Claims. However, "petitioner" is used instead of "plaintiff".

In late August 1964, a Treasury Department official approached the petitioner in Los Angeles and asked him to furnish original information relative to various cases of customs law violations by various Japanese trading companies. After several subsequent discussions with the official, petitioner accompanied him from Los Angeles to Washington for meetings with an Assistant Secretary of the Treasury and other Treasury officials. Thereafter, petitioner disclosed detailed information about the false invoicing practices of numerous Japanese steel companies. Although there is nothing in the record to show the exact manner of invoicing employed by the companies or whether the same method was used uniformly throughout the industry, the practices all involved violation of the same statute: 19 U.S.C. 1592. As a result of petitioner's information and a subsequent settlement with the importers, the Government recovered a total of $706,965.00 in fines and unpaid duties from 19 companies. The various amounts making up this figure ranged in size from a

recovery of $302,380.00 from one large producer, to $120.00 from a much smaller one.

The instant litigation arose following the Government's granting of a reward of $50,000.00 while petitioner claimed he was entitled to a sum of $101,146.25 more. The total figure sought was arrived at by taking $50,000.00, under the terms of Title 19, United States Code, Section 1619, as to those violators, resulting in more than $200,000.00 being recovered, and 25% as to the remaining amounts.

Prior to the institution of suit, in response to the claim of petitioner, he was sent a copy of a 1917 administrative ruling of an Assistant Secretary of the Treasury (33 Treas. Dec. 51) based upon a Comptroller's Decision (33 Treas. Dec. 51) nine days old.

Said administrative ruling reads as follows:

"DECISIONS OF THE COMPTROLLER

A concrete case referred to in your submission is one in which the information given at one time by an informer led to the institution of a number of actions against different firms and individuals and resulted in the recovery by compromise and fines of more than $100,000.

As the customs regulations authorize the payment of compensation at the rate of 25 per cent of the amount recovered, subject to the maximum fixed in the statute, the amount payable in such a case would depend upon the meaning of the term 'in any case' as used in the law.

The provisions of the statute in question is as follows:

'* * * And whenever any person not an officer of the United States shall furnish a district attorney, or to any chief officer or the customs, original information concerning any fraud upon the customs revenue, perpetrated, or contemplated, which shall lead to the recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, whether by importers or their agents, or by any officer or person employed in the customs service, such compensation may, on such recovery, be paid to such person so furnishing information as shall be just and reasonable, not exceeding in any case the sum of five thousand dollars; which compensation shall be paid, under the direction of the Secretary of the Treasury, out of any money appropriated for that purpose.'

The evident purpose of this law was to fix the compensation to be paid to the informer for furnishing the information. The value of the service to the Government is just as great when the entire amount recovered as the result of the information is recovered in one action and from one individual as when recovered in numerous actions and from different individuals. That Congress in fixing the maximum compensation to be paid in any case had reference to the total payment to be made for the information furnished in any case, regardless of the number of actions or different recoveries that might arise as a result of such information, I think there can be no room for reasonable doubt. The service for which the compensation is paid is ren-

dered when the information is furnished, and it was clearly the intent of the law to fix a maximum compensation to be paid for any such service.

There can be neither reason nor justice in allowing an informer $25,000 for information that led to the recovery of $20,000 in each of five different actions in one case, and in allowing only $5,000 to another informer for like information that led to the recovery of $100,000 in a single case.

I am of opinion that the term 'in any case' as used in the statutes had reference to the information furnished, rather than to the recoveries growing out of such information. The question submitted is answered accordingly."

At the oral argument before the Court of Claims, in response to a question from the Court, counsel for the United States informed the Court that a situation similar to the case at bar had arisen, in the past, one or two times.

The bases for federal jurisdiction in the court of first instance was Title 19, United States Code, Section 1619, and Title 28, United States Code, Section 1491.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The decision of the Court of Claims in the case at bar has decided a federal question in a way in conflict with applicable decisions of this Honorable Court. As stated by the Honorable Linton M. Collins, Judge of the United States Court of Claims, in the dissent in the instant case, the cornerstone of the subject opinion is the court's application of the doctrine of contemporaneous administrative construction. The Court of Claims, in relying on *McLaren v. Fleischer,* 256 U.S. 477, at 481 (1921), found that there was an administrative practice that had developed relative to the subject statute. Such is surely not the case and the conclusion drawn by the Court of Claims is unwarranted in the circumstances. There can be no question but that the administrative agency charged with administering Section 1619 of Title 19, United States Code, the Department of the Treasury, adopted a view of the construction of the statute in 1917. Since that time, however, the subject "Decision" has been applied on "one or two subsequent" occasions. *Cornman v. United States,* 409 F. 2d 230, at 235 (Ct. Cl. 1969) (dissent of Judge Collins). It is submitted that one or two applications of an opinion cannot reach the stature of "an administrative practice", especially in light of the fact that over fifty years have passed since the applicable "Decision" was formulated. Even *McLaren* relates, at 481, that "many" situations were based upon the construction there in question. There is simply no administrative practice of any value in the instant case.

When one reads the words of Judge Learned Hand, in *Fishgold v. Sullivan Drydock & Repair Corporation,*

154 F. 2d 785, at 789-90 (2d Cir. 1946), one learns that it is the duty of one charged with the administration of a statute to resolve doubts in favor of one "side which he represents." To quote Judge Hand:

> "Whether the weight to be given to such rulings is less than to regulations for the conduct of, or decisions in, contested cases, has never been expressly decided, though was intimated in Skidmore v. Swift, supra, 323 U.S. at page 139, 65 S.Ct. at page 164; and see Judge Frank's dissent in Duquesne Warehouse v. Railroad Retirement Board, 2 Cir., 148 F.2d 473, 485-487. There is indeed a basis for making such a distinction because the position of a public officer, charged with the enforcement of a law, is different from one who must decide a dispute. *If there is a fair doubt, his duty is to present the case for the side which he represents, and leave decision to the court, or the administrative tribunal upon which lies the responsibility of decision.* If he surrenders a plausible construction, it will, at least it may, be surrendered forever; and yet it may be right. Since such rulings need not have the detachment of a judicial, or semi-judicial decision, and may properly carry a bias, it would see that they should not be as authoritative; . . . . Be that as it may, concededly all such considerations are only cautionary, and not authoritative; for in the end, after whatever reserve, *upon the court rests the ultimate responsibility of declaring what a statute means:* as the Supreme Court recognized in its last word upon the subject. Jewell Ridge Coal Corp. v. Local, 325 U.S. 161, 65 S. Ct. 1063." (Emphasis added.)

In order to further bolster the argument that "administrative practice" is not a suitable criterion for deciding the instant case, the Court's attention is humbly directed to Judge Collins' dissent at 409 F. 2d 235.

Once the so-called administrative practice is cast aside, one is left with the statute itself. The only logical meaning is that the phrase "in any case" refers to the singular "duties withheld," "fine, penalty or forfeiture incurred." "Case" simply cannot be defined in terms of the service rendered, as the Court of Claims chose to do in what was a rather blind reliance on an illusory administrative practice.

To define "in any case" as the Court of Claims has, does harm to the liberal policy of Congress with respect to informant's fees and results in an unequal application of the law. It is submitted that the immediately preceding grounds are cogent reasons for ignoring, not only the Decision of the Comptroller, but also the opinion of the Court of Claims.

It is the intent of Congress that informers' award provisions should be as liberal as possible. In discussing the 1935 amendments to the applicable statute and the need for liberal interpretation of said compensation provisions, the Senate Committee Report stated as follows:

> "Section 305(a) amends section 619 of the Tariff Act of 1930 which provides for the award of compensation to informers in forfeiture cases under the customs laws. The Comptroller General has held that in a smuggling case, if the forfeiture is actually made under navigation law (many of the navigation laws are in part or in whole intended as revenue protective measures),

there can be no award of compensation to an informer. Many seizures and forfeitures of rum runners result from information received by custom officers from informers. *It is therefore desirable that informers' award provisions should be as liberal as possible.* The present amendment is designed to permit awards where the forfeiture is made under the navigation laws. (emphasis supplied)

"Section 305(b) further amends section 619 of the Tariff Act of 1930 to permit payment of awards of 25 percent of the appraised value of informers in cases where forfeited vessels, vehicles, or merchandise are not sold at condemnation sales but are taken over for governmental use or are destroyed under the provisions of section 5 of this bill, as a continuing menace to the revenue of the United States, or under the provisions of any other revenue law. *This is in line with the comment made relative to section 305 (a) that the provisions permitting compensation of informers should be liberal and thus encourage the continuation of these valuable sources of information concerning smuggling activities.*" (Emphasis supplied) S.Rep. No. 1036, 74th Cong., 1st Sess., p. 16 (1935).

The equal protection of the laws certainly may not be denied a person by the federal government. *Bolling v. Sharpe,* 347 U.S. 497 (1954).

Put succinctly, the decision of the Court of Claims differentiates unconstitutionally between your petitioner and nineteen persons who could have provided the identical information. There can be no question but that if

the information provided by petitioner were provided by nineteen individuals about the nineteen relevant violators, then those nineteen persons would be entitled to one-fourth of the recoveries made, each, of course, being subject to the $50,000.00 limitation.

The Court of Claims misconstrued the phrase "original information." At 409 F. 2d 234, the following appears:

> ". . . As the Government points out, had plaintiff leaked his information on a piecemeal basis, the Treasury might well have ruled on plaintiff's second disclosure and demand for compensation that since plaintiff's information involved the same thing—false invoicing practices in violation of 19 U.S.C. § 1592—his information was no longer 'original' after the first disclosure. Such a disposition would not frustrate the operation of the statute, for the Government, after the routine instigation of independent investigation on the basis of the information initially furnished, would in all probability discover the same violations later reported."

The term "original information" can only be interpreted to mean (1) new information previously unknown, (2) about any fraud upon the customs revenue, (3) perpetrated or committed. The Court of Claims, it appears, has interpreted "original information" in terms of "false invoicing practices." Practically all customs frauds are related to invoicing, either failure to invoice, or misstatement of invoices. Even the covert smuggler who uses a boat is guilty of a failure to properly invoice in violation of Section 1592.

The misconstruction of "original information" brings to mind several examples which demonstrate the illogical construction placed thereon. Is the informer in Los Angeles who provides information relative to a false invoicer in Los Angeles to be considered along with a similar person in Boston for the purpose of the $50,000.00 limitation? If so, since it involves "false invoicing practices," when is the award to be made? At the end of the fiscal year? At the end of the calendar year? Are all awards for information relative to false invoicing subject to the $50,000.00 limitation? Is Congress truly saying that a reward is offered up to $50,000.00 no matter how much information is received? or how much in recoveries is made? or how many violators are involved?

To digress for a moment, there is also included within Section 1619 the person who presumably stands on docks and piers and notices smuggling activities. If he is responsible for the seizure in January of a ship and its contents resulting in a recovery of $200,000.00 in fines, etc., is he to be denied a further recovery when he effects a detection and seizure in February in a like amount arising out of smuggling?

Surely the category of fraud, or fraud itself, cannot be a limiting factor within "original information." The interpretation of "original" is simply too broad. To take the interpretation to its logical conclusion would mean that a person could receive $50,000.00 for information relative to fraud, and no more, within his lifetime.

In discussing the "leaking" of information or separate reports of violations, the Court of Claims stated "the Government, after the routine instigation of inde-

pendent investigations on the basis of the information initially furnished, would in all probability discover the same violations later reported." 409 F. 2d 234.

If the Court of Claims is saying that the reporting of fraud, or invoicing fraud, of one importer and his exporter would lead to the detection of violations by other importers and their exporters, then such is not supported in logic. If the petitioner provided information relative to fraud by one double-invoicing exporter, there is no logical way to say that "independent investigation" would disclose other double-invoicing exporters. The fact that double invoicing takes place is not a revelation. To assume that independent investigation *could* defeat the obligation to pay rewards for information is to ignore the intent of Congress in providing incentives to persons other than Government officials. The relevant question is whether the Government had the information at the time it was provided, not whether it is within the realm of possibility that independent investigation could have revealed it.

To further support the obvious fact that nineteen separate and distinct providers of information would receive nineteen rewards, each on a twenty-five percent basis, the Court's attention is directed to "EXHIBIT B" of the Plaintiff's Motion for Summary Judgment, which demonstrates in a letter from Government counsel that the recoveries made were from separate and distinct shippers. Routine investigation might disclose additional frauds of one violator, but when the violators are separate and distinct, there is no basis for assuming that one would lead to the next, and so forth.

Assuming that this Court agrees that nineteen persons would have recovered twenty-five percent of the nineteen recoveries, then there is no valid basis for discriminating between the plaintiff and those nineteen. The distinction must be made in terms of the violators and not the informers.

Conclusion.

For the above stated reasons, it is submitted that a writ of certiorari should issue to review the judgment of the United States Court of Claims.

Respectfully submitted,

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APPENDIX "A".

Opinion of the United States Court of Claims.

In the United States Court of Claims.

Arnold Cornman v. The United States No. 125-68. (Decided April 11, 1969)

Herbert D. Struman, attorney of record, for plaintiff. *Sherman and Sturman,* of counsel.

Katherine H. Johnson, with whom was *Assistant Attorney General William D. Ruckelshaus,* for defendant.

Before Cowen, *Chief Judge,* Reed, *Justice (Ret.)* sitting by designation, Laramore, Durfee, Davis, Collins and Skelton, *Judges.*

ON PLAINTIFF'S MOTION AND DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

Reed, *Justice (Ret.),* sitting by designation, delivered the opinion of the court:

The sole issue in this case concerns the meaning of the words "in any case" as they refer to a limitation on the amount of compensation payable to informers under the Tariff Act of 1930 (46 Stat. 758, as amended, 49 Stat. 527). The specific informers' compensation section invloved here, 19 U.S.C. § 1619, provides "a compensation of 25 per centum of the net amount recovered, but not to exceed $50,000 in any case," for any person furnishing "original information" on customs law violations that "leads" to a recovery of a fine, penalty, or duties withheld. As a result of plaintiff's disclosure of asserted improper invoice practices on the part of a number of Japanese steel companies in violation of 19

U.S.C § 1592,[1] the Government recovered an aggregate amount of some $700,000 from those companies in unpaid duties and penalties. The precise question facing us is whether the words "in any case" refer to the service of furnishing the false invoicing information, as the Government contends, limiting plaintiff's compensation to $50,000, or whether they refer to each individual recovery from each company for each individual violation, as plaintiff contends, allowing him to compute the statutory maximum separately for each company involved.

The facts are simple and undisputed. In late August 1964, a Treasury Department official approached the plaintiff in Los Angeles and asked him to furnish original information relative to various cases of customs law violations by various Japanese trading companies. After several subsequent discussions with the official, plain-

[1]1592. Penalty against goods.—If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 485 of this Act [§ 1485 of this title] (relating to declaration on entry) without reasonable cause to believe the truth of such statement, or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement; or is guilty of any willful act or omission by means whereof the United States is or may be deprived of the lawful duties or any portion thereof accruing upon the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from such person or persons, shall be subject to forfeiture, * * *"

tiff accompanied him from Los Angeles to Washington for meetings with an Assistant Secretary of the Treasury and other Treasury officials. Thereafter, plaintiff disclosed detailed information about the false invoicing practices of several Japanese steel companies. Although there is nothing in the record to show the exact manner of invoicing employed by the companies or whether the same method was used uniformly throughout the industry, the practices all involved violation of the same statute, 19 U.S.C. § 1592. As a result of plaintiff's information and a subsequent settlement with the importers, the Government recovered a total of $706,965.00 in fines and unpaid duties from 19 companies. The various amounts making up this figure ranged in size from a recovery of $302,380 from one large producer to $120 from a much smaller one.

The statute under which plaintiff then claimed his informer's fee, 19 U.S.C. § 1619, reads in part as follows:

> Any person not an officer of the United States who * * * furnishes to * * * the Secretary of the Treasury, * * * original information concerning any fraud upon the customs revenue, * * * which * * * information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed $50,000 in any case. * * *

There have been no judicial decisions construing the critical statutory language involved here, and the existing legislative history and administrative interpretation can be briefly summarized. The original informers'

compensation statute dates back to the Act of June 22, 1874 (18 Stat. 186), which provided that "such compensation may, on such recovery [of any withheld duties], be paid to such person so furnishing [original] information [concerning any customs fraud] as shall be just and reasonable, *not exceeding in any case the sum of five thousands dollars.*" (Emphasis added.) The exact wording of the present statute was not introduced until 1922, in the Tariff Act of 1922 (42 Stat. 988), which repealed the 1874 Act in section 643 and provided the following in section 619:

> Any person * * * who furnishes * * * original information concerning any fraud upon the customs revenue, * * * which * * * information leads to a recovery of any duties withheld, * * * may be awarded * * * *a compensation of 25 per centum of the net amount recovered, but not to exceed $50,000 in any case,* which shall be paid out of moneys appropriated for that purpose. (Emphasis added.)

The original House version of the bill (H.R. 7456) had simply readopted the language of the 1874 Act for section 619 of the 1922 Act, and the Senate amendment providing the precise language, above, that was eventually enacted and persists to the present day, was explained by the Conference report as follows:

> The House bill limited the compensation to be paid the informers in fraud cases to $5,000. The Senate amendment provides a compensation of 25 per cent of the net amount recovered but not more than $50,000, in order to recover greater amounts in these cases. (H. Rep. 1207, 67th Cong., 2d Sess. 1922).

Administrative processing of large claims such as the one involved here has been based on a 1917 decision of the Comptroller of the Treasury dealing with a similar fact situation of original information leading to multiple recoveries from separate companies, and interpreting the language of the 1874 Act. That decision (24 Comp. Treas. 17) held that:

> Under the act of June 22, 1874, prescribing the payment of compensation, not exceeding in any case the sum of $5,000, to persons giving original information of customs frauds, which information shall lead to the recovery of withheld duties, the term "in any case" has reference to the total payment for the service rendered, regardless of the number and value of the recoveries effected thereunder.

In holding that the term "in any case" had reference "to the information furnished, rather than to the recoveries," the Comptroller pointed out the incongruity and injustice of allowing an informer who disclosed a single $100,000 recovery only $5,000 in compensation, while allowing an informer whose information leads to five $20,000 recoveries as much as $25,000. "It was clearly the intent of the law," the Comptroller said, "to fix a maximum compensation to be paid for any such service" of furnishing information.

According to an uncontroverted affidavit submitted by the Government from a customs official who has participated in a majority of section 619 compensation awards since 1930, the Bureau of Customs has "consistently followed and applied this 1917 administrative" ruling in the rare instances where this unusual question

has arisen. Plaintiff's claim was so handled here, of course, as he was sent a copy of the 1917 ruling in response to his request for additional compensation. In 33 Treas. Dec. 51 (1917), the Assistant Secretary of the Treasury quoted from the Comptroller's decision and directed all officials concerned to follow it in making awards. In the affidavits, the official states that there have been no later decisions revoking or amending these instructions.

The instant litigation arose following the Government's award of $50,000 to the plaintiff and his subsequent, unsuccessful attempts to have the compensation computed individually for each company involved. After receiving a copy of the Treasury ruling referred to above from the Government in answer to his second demand for additional compensation, plaintiff filed this petition claiming that he was entitled to a sum of $101,146.25 over and above the original $50,000. The total amount plaintiff claimed he was entitled to—$151,146.25—was arrived at by taking $50,000 with respect to any one recovery exceeding $200,000, and 25% of the remaining amounts. There being no disputed issues of fact, both parties moved for summary judgment after the opening briefs were filed. For reasons outlined more fully below, we grant the Government's cross-motion for summary judgment and dismissal of the petition.

At the outset, we start with the simple and well-accepted proposition that the construction of a statute by the administrative agency given the primary duty of

executing it is entitled to great weight. To uphold the Secretary's application of the phrase "in any case," we need "not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings."[2] The test of time adds strength to a conclusion previously arrived at:

> [T]he practical construction given to an act of Congress, fairly susceptible of different constructions, by those charged with the duty of executing it is entitled to great respect, and, if acted upon for a number of years, will not be disturbed except for cogent reasons.[3]

Plaintiff's contention here, in the face of the 1917 Treasury ruling and the familiar principle noted above, is essentially threefold. He argues first that the plain meaning of the words gives rise to only one interpretation, and that the Treasury construction is clearly erroneous and therefore entitled to no respect. He argues secondly that even if the 1917 ruling was arguably a reasonable interpretation of the 1874 statute, the language of the compensation provision was changed so substantially in 1922 that the 1917 ruling is no longer applicable or controlling. Finally, plaintiff argues that the Treasury ruling will lead to such mischievous results that it ought not to be followed in this or similar cases. We must reject each of these contentions.

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[2] *Udall v. Tallman*, 380 U.S. 1, 16 (1964), quoting from *Unemployment Comm'n v. Aragon*, 329 U.S. 143, 153 (1946).

[3] *McLaren v. Fleischer*, 256 U.S. 477, 481 (1921).

Plaintiff's first contention, that "in any case" can refer only to each recovery from each individual company for each violation, is premised essentially on the fact that the statute is written in the singular: the statute, he points out, speaks in terms of any "fraud," "fine," "penalty," "forfeiture," "amount recovered," and finally, "a compensation"—all in the singular. Therefore, he says, "case" must be read as referring, also in the singular, to any company or violator against whom the Government has any active "file," whether or not the "case" is actually litigated. Plaintiff's own analysis suggests two additional, reasonable interpretations, however: carried to its logical extreme, plaintiff's position could require breaking down the violations of each company into each separate shipment, or, short of that, could allow each economic unit to be treated separately but require parent-subsidiary groups to be considered as single units for purposes of the statute. (Three of the nineteen companies involved here are members of a parent-subsidiary control group.) Another possibility, of course, would be simply to give the words "in any case" their common, everyday meaning, i.e., "under any circumstances," "in all events," or "without regard to any other considerations." Given these possibilities, it is difficult to say that the statute has only one meaning, and that a fifth construction, made by the Treasury and viewing "case" as referring to the service of furnishing original information, is not "at least an admissible one."

Plaintiff argues secondly that the 1917 ruling should not be given continued respect in view of the changes in the statute in 1922. Plaintiff's position ignores the simple fact, however, that the 1917 ruling, which has never been rescinded, *has* been given continued respect, and as such can be viewed as a reinterpretation of the 1922 statute; in this respect, then, plaintiff is only rephrasing his first contention. It is worth pointing out in addition that the Conference Report cited above indicates that the Senate seems to have changed the language of the 1874 act solely for the purpose of increasing the ceiling of compensation amounts that could be awarded from $5,000 to $50,000. Indeed, the absence of any reference in that report to the critical words "in any case" belies any notion that Congress intended to change the method of computing the award and suggests that Congress, whether or not it was aware of the 1917 ruling, understood the enumerated dollar figures as establishing an absolute limit on the amount that could be paid informers for any particular original information, regardless of the number of instances to which it was applicable.

Plaintiff contends finally that there are convincing reasons for abandoning the Treasury approach, regardless of its validity as a matter of statutory construction. To fail to do so would, he urges, encourage informers to give out information on a piecemeal basis in order to obtain the maximum compensation, or not to give it out at all if there is no waiting reward. Plaintiff

ignores the word "original," however, which must be read in conjunction with the "information" furnished. As the Government points out, had plaintiff leaked his information on a piecemeal basis, the Treasury might well have ruled on plaintiff's second disclosure and demand for compensation that since plaintiff's information involved the same thing—false invoicing practices in violation of 19 U.S.C. § 1592—his information was no longer "original" after the first disclosure. Such a disposition would not frustrate the operation of the statute, for the Government, after the routine instigation of independent investigations on the basis of the information initially furnished, would in all probability discover the same violations later reported.

The Government's motion for dismissal is sustained.

Plaintiff's motion for summary judgment is denied, defendant's cross-motion for summary judgment is granted and the petition is dismissed.

Collins, *Judge*, dissenting:

I respectfully differ with the decision of the court on the ground that the language of 19 U.S.C. § 1619—the only reliable guide in this instance—demands, in my opinion, a contrary result.

The cornerstone of the court's opinion as I read it is the prior administrative construction of the statute. This construction would limit plaintiff to a $50,000 maximum reward for information given at any one time, irrespective of the number of companies or the number of violations involved. Under the doctrine of contemporaneous administrative construction, as the court holds, the agency's interpretive practice here is entitled to great respect and, apparently, presumptive validity. *See, e.g., Schellfeffer v. United States,* 170 Ct. Ct. 178, 343 F. 2d 936 (1965); *H. B. Zachry Co. v. United States,* 170 Ct. Cl. 115, 344 F. 2d 352 (1965). Although I completely accept the viability of this doctrine (*see DeLano v. United States,* 183 Ct. Cl. 379, 388, 393 F. 2d 517, 521 (1968)), I do not believe this is an appropriate case for its application.

There are, it seems to me, two major reasons why the consistently maintained construction of a statute by the agency charged with its enforcement is given great weight by a court. First, as a particular reading of a statute is repeated and solidifies into doctrine, those whose activities are affected by the statute come to rely upon the given construction. 2 J. SUTHERLAND, STATUTORY CONSTRUCTION 521 (3d ed. 1943). An analogous consideration is the judicial recognition (1) that the practical construction of the statute is an aid to determining the meaning of the act and (2) that adherence

to that construction makes for certainty in the law and justifies reliance upon public officials. 2 J. SUTHERLAND, *supra* at 513.

The second reason is the judicial deference paid to precedent. When an agency has been faced over a number of years with deciding a goodly number of factually dissimilar cases involving the same legal issue and has consistently reached the same result, the probability that the administrative construction is correct is far greater than it is when only a few isolated cases have been decided. The parallel to the comparative judicial treatment as authority of one or two cases in point, as distinguished from a long line of cases, is obvious.

In the instant case, only one administrative determination is cited to us, and that case was decided in 1917 under the predecessor of the current statute. We are told by affidavit that the policy expressed in that decision has been consistently maintained. Yet, defendant's counsel at oral argument admitted to knowing of only one or two subsequent applications of the rule, apparently in a purely executive fashion. Nothing in the affidavit is inconsistent with this statement. In light of the fact that the informer-compensation statute, in one form or another, has been in existence for nearly 100 years, I have great difficulty in according to so few isolated agency determinations the label of "consistent administrative practice."

In the first place, the agency has not been faced with a variety of factual situations involving the same issue. There has been no oft-repeated application of a well-known rule on a day-to-day, or even year-to-year, basis. Apparently, there has been only one formal quasi-

judicial consideration of the issue. It is therefore much truer to say that the policy has been consistently maintained in theory rather than in practice. Because of this limited application of the ruling in random instances scattered over a considerable period of time, it is difficult to see how those affected by the act can be said to have generally accepted and relied upon a "practical interpretation' of the law. *See* 2 J. SUTHERLAND, *supra* at 515. There is no established line of administrative cases here, the overturning of which would create uncertainty in the law or destroy faith in public officials.

Because the instant administrative practice has not been consistently and repeatedly maintained within the meaning of the contemporaneous construction doctrine as I understand it, I would not accord to the lone decision of the Comptroller any presumptive correctness. The administrative policy here is more properly treated simply as evidence bearing upon the meaning of the statute. However, as explained below, I believe that the agency interpretation tends to defeat the underlying purposes of the statute and is accordingly less than reasonable. *See Henneberger v. United States*, 185 Ct. Cl. 614, 627-28, 403 F. 2d 237, 244 (1968) (dissenting opinion); *Tasker v. United States*, 178 Ct. Cl. 56 (1967).[1]

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[1]I do not understand the court to rely upon the principle that subsequent reenactment of a statute with congressional knowledge of the administrative practice is an implied raification of such practice. *See DeLano v. United States*, 183 Ct. Cl. 379, 393 F. 2d 517 (1968); *Ware Knitters, Inc. v. United States*, 144 Ct. Cl. 141, 168 F. Supp. 208 (1958). There is no evidence here that Congress knew of the Comptroller's decision when it reenacted the instant statute. Moreover, this court has been

(This footnote is continued on the next page)

The court also attempts to find a resolution of the statute's possible ambiguity in the legislative history, a clearly proper investigation. *Akerson v. United States,* 175 Ct. Cl. 551, *cert. denied,* 385 U.S. 946 (1966); *Thermo King Corp. v. United States,* 173 Ct. Cl. 860, 354 F. 2d 242 (1965). The court interprets the portion it quotes of H.R. Rep. No. 1207 as indicating that Congress intended the change from $5,000 to $50,000 to establish an absolute limit. However, because it is at least clear that the limit has always been absolute as applied to any one violation, the report could also be read just as easily as evidencing an intent to increase the limit on an informer's compensation for reporting each violation, as distinguished from several violations by several companies. Where the legislative history itself is ambiguous, it is at best hazardous to rely upon it to govern judicial construction of a statute. *See United States v. Philadelphia Nat'l Bank,* 374 U.S. 321, 348-49 (1963); *Crawford v. United States,* 179 Ct. Cl. 128, 144, 376 F. 2d 266, 275 (1967), *cert. denied,* 389 U.S. 1041 (1968). Unfortunately, the language and legislative history of the other Federal informer statutes is likewise helpful.

Therefore, it is in the statute itself that we must find its meaning. As the court notes, the statute's terms are written in the singular. However, because of the variety of possible meanings of the statutory phrase "in

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rightly hesitant to fully rely upon the implied-ratification doctrine in the absence of a clear showing of congressional awareness of the agency practice. *See Fox v. United States,* 145 Ct. Cl. 186, 188, *cert. denied,* 361 U.S. 887 (1959); *Ware Knitters, Inc. v. United States, supra; cf. A. P. Green Export Co. v. United States,* 151 Ct. Cl. 628, 284 F. 2d 383 (1960). *But cf. Crawford v. United States,* 179 Ct. Cl. 128, 376 F. 2d 266 (1967), *cert. denied,* 389 U.S. 1041 (1968).

any case" and relying on the administrative ruling, the court declines to accept plaintiff's reading of the statute.

In the first place, it seems to me that the meaning of the word "case" is an issue secondary to the resolution of whether recovery can be had in *each* "case," whatever that term means. Defendant argues that the phrase "in any case" is the common colloquialism meaning "under any circumstances" or "in any event," such that the $50,000 limitation would apply to the total informer service rendered, irrespective of other considerations.

Even assuming that defendant's interpretation of the phrase is correct, it by no means follows that the limitation was intended to apply to the *total* recovery. No language in the statute supports this conclusion. On the contrary, when the statute is read as a whole, as is proper (*see Jameson v. United States,* 185 Ct. Cl. 471, 475, 401 F. 2d 808, 810 (1968); *cf. General Motors Corp. v. United States,* 151 Ct. Cl. 366, 370, 283 F. 2d 699, 701 (1960)), the phrase "in any case" must be viewed as referring to, modifying, and being modified by the *singular* fine, penalty, or other recovery described. Plaintiff readily admits—in fact argues—that the $50,000 limitation does apply to the recovery for any one violation.

The court otherwise refuses to accept plaintiff's reading of the statute in the singular primarily because of the administrative ruling previously mentioned. As stated above, I would not attribute to the agency's policy more than indicative weight. If my position on this point is accepted, it seems to me that plaintiff's construction of the specific language of the statute is more plausible than and outweighs the agency's interpretation.

Whether the limitation applies to the individual recovery for each violation or to the total amount recovered for all violations simultaneously reported remains in question. As mentioned above, I see nothing in the statute to indicate that the limitation applies to the entire recovery, as the court suggests. On the other hand, the singular language of the statute clearly tends to substantiate plaintiff's argument. Logically, however, as the court recognizes, each particular shipment could be broken down into its components. However, in actuality, each illegal shipment as a whole would constitute one violation, in the same way that the simultaneous theft of 1,000 individual dollars would constitute one count of larceny. The fine, penalty, or duties contemplated by the statute are assessed by virtue of each violation. Accordingly, plaintiff could conceivably seek 25 percent of each recovery for each violation by each of the several companies here involved, subject always to the limitation applied to each such recovery and the prerequisite of originality.

However, in recognition of the administrative treatment of the violations of one company as one case file, plaintiff seeks only 25 per cent of the total recovery from each company, not to exceed $50,000 in any instance. In my opinion, plaintiff's construction of "case" in this fashion, even if less generous than the statute contemplates, is nonetheless entirely consistent with the other terms of the statute, and I would find for plaintiff despite problems which might arise in other cases regarding the meaning of "company."

It is eminently clear that 19 U.S.C. § 1619 is designed to encourage the disclosure of customs violations to enable the Government to recover at least a portion of the

duties it would otherwise lose. The statute must be construed to best effectuate this policy. The court's decision, in my opinion, could seriously thwart the congressional aim. As a practical matter, someone who has knowledge of extensive customs violations is not likely to gratuitously give the Government more original information than necessary to recover the maximum allowed by the court's ruling.[2] To do so would be to expose himself to the wrath and, in some cases, retribution of those against whom he has informed without any offsetting compensation. The court's apparent belief that its decision will not seriously affect the receipt of information is, in my opinion, unrealistic.

There is one further reason why I believe the majority opinion and the administrative ruling are incorrect. I assume that no one would seriously dispute that an informer who gave information for which he received $50,000 on one occasion, and who later returned with original information regarding entirely different violations by other persons, would not be precluded by virtue of his first recovery from receiving his fee for the later information. Why then should an informant be limited to only $50,000 if he is in a position to give at one time the same distinct original information about separate violators? The only variable in the two hypotheticals is the time factor. I see no justification in the statute for distinguishing between the two cases.

Accordingly, I would grant plaintiff the relief sought.

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[2]Once the informer has met the prerequisites of the statute, the Secretary is without discretion to refuse to pay the appropriate amount. *Wilson v. United States,* 135 F. 2d 1005 (3rd Cir. 1943); *Tyson v. United States,* 91 Ct. Cl. 139, 32 F. Supp. 135 (1940).

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 608

ARNOLD CORNMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. A) is reported at 409 F. 2d 230.

JURISDICTION

The judgment of the Court of Claims was entered on April 11, 1969. A petition for rehearing was denied on June 20, 1969. The petition for a writ of certiorari was filed on September 17, 1969. The jurisdiction of this court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether 19 U.S.C. 1619, which provides for an informer's award to persons submitting information

relating to violations of the customs law of 25 percent of the amount recovered by the government "but not to exceed $50,000 in any case," limits to $50,000 the award for any single submission of information, even though such information relates to violations by a number of persons.

STATUTE INVOLVED

Title 19, U.S.C. 1619 (Tariff Act of 1930 [46 Stat. 758, as amended, 49 Stat. 527]) provides:

§ 1619. AWARD OF COMPENSATION TO INFORMERS.

Any person not an officer of the United States who detects and seizes any vessel, vehicle, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer of the customs, or who furnishes to a United States attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws, perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed $50,000 in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, merchandise, or baggage is forfeited to the

> United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed $50,000 in any case.

STATEMENT

Petitioner furnished to the Treasury Department information regarding false pricing and invoicing practices of various Japanese steel companies in violation of the customs laws. Based on this information, the government collected $706,965.00 in fines and unpaid duties from 19 companies. (The amount collected from the individual companies varied from $120.00 to $302,380.00.) (Pet. App. A, pp. 2–3).

Petitioner thereafter applied to the Secretary of the Treasury under 19 U.S.C. 1619 for an informer's award. On February 6, 1967, the Secretary awarded petitioner the statutory maximum of $50,000.00 for the information which he had disclosed (Pet. App. A, p. 6; Pet. in the Court of Claims, par. 9; Answer, par. 9). In making that award, the Secretary relied on the express statutory language of 19 U.S.C. 1619, which authorizes the Secretary to pay "compensation of 25 per centum of the net amount recovered, but not to exceed $50,000 *in any case*" (italics supplied). These italicized words, *i.e.*, "in any case", had been consistently interpreted by the Treasury Department to refer to the service of furnishing false information, rather than, as petitioner contended, to refer to "each company for each individual violation" (Pet. App. A. 2).

Petitioner then commenced this action in the Court of Claims. On a motion and cross-motion for summary judgment, the court, per Justice Reed, granted the government's cross-motion and held that the phrase "in any case" was intended to limit compensation on the basis of the service provided without regard to the number of fines or duties recovered (Pet. App. A, p. 1). Judge Collins dissented.

ARGUMENT

The decision of the court below, sustaining the administrative award, is correct. Moreover, the question is not of importance or recurrent. To the contrary, the present case, as noted by the court below, is one of the "rare instances" where this unusual question has arisen (Pet. App. A, 5–6). Accordingly, review by this Court is not warranted.

1. The Court of Claims correctly held that the phrase "but not to exceed $50,000 in any case" does not authorize an award of separate informer's fees, each with a $50,000 limitation, for each separate violation covered in a single submission of information. There is no reason to believe that Congress intended the maximum amount of the award in two instances to differ simply because in one case $706,965 is received from one company while in the other the same amount is received from 19 companies. The administrative interpretation of the statutory language is a reasonable one.

The interpretation given to a statute by the agency primarily responsible for administering the statute is entitled to great weight, especially if the interpretation has been followed for many years. *Udall* v.

Tallman, 380 U.S. 1, 16; *McLaren* v. *Fleischer,* 256 U.S. 477, 481. In this case, the Treasury Department has consistently interpreted the statute this way since 1917 (Pet. App. A, pp. 5–6). Moreover, the statute has been reenacted by Congress twice since 1917 without changing the language in question. Tariff Act of 1922 (42 Stat. 988), Tariff Act of 1930, Sec. 619 (46 Stat. 758). These reenactments support the agency interpretation. See *Johnson* v. *Manhattan Ry. Co.,* 289 U.S. 479, 500; *United States* v. *Ryan,* 284 U.S. 167, 175.

2. Petitioner alleges that the decision below violates the "equal protection" clause, because he is being treated differently than "19 persons who could have provided the identical information." Pet. 11. But 19 persons would have received awards only if each had separately qualified by providing independent and original information. If each of the 19 separately qualified for an award, each would have had the exact same rights and been subject to the same limitations as the petitioner, including the $50,000 limitation.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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